

April 21, 2008

MEMORANDUM TO: David M. Spooner
Assistant Secretary
for Import Administration

FROM: Stephen J. Claeys
Deputy Assistant Secretary
for Import Administration

RE: Antidumping Duty Investigations of Certain Steel Nails from the Peoples Republic of China (PRC) and the United Arab Emirates (UAE)

SUBJECT: Post-Preliminary Determinations on Targeted Dumping

Summary

For purposes of these post-preliminary determinations, we have used a new methodology to analyze targeted dumping as discussed below. In doing so, we have determined that, for the PRC respondent Xingya Group (comprised of Suzhou Xingya Nail Co., Ltd, Senco-Xingya Metal Products (Taicang) Co., Ltd., Yunfa International Resources Inc., Senco Products, Inc., and Omnifast Inc.), there is a pattern of export prices for comparable merchandise that differs significantly among purchasers, and that these differences cannot be taken into account using the average-to-average methodology, pursuant to section 777A(d)(1)(B) of the Tariff Act of 1930, as amended (the Act). Therefore, we applied the average-to-transaction methodology to the targeted export sales for Xingya Group and found a margin of 48.63 percent for Xingya Group. For the PRC respondent Illinois Tool Works Inc. and Paslode Fasteners (Shanghai) Co. Ltd. (collectively, Paslode), under the new methodology, we did not find a pattern of export prices for comparable merchandise that differs significantly among regions. Therefore, we applied the average-to-average methodology to all sales and found a de minimis margin (0.11 percent) for Paslode.

For the UAE respondent, Dubai Wire FZE /Global Fasteners Ltd. (Dubai Wire), under the new methodology, we did not find a pattern of export prices for comparable merchandise that differs significantly among purchasers. Therefore, we applied the average-to-average methodology to all sales and found a de minimis margin (0.09 percent) for Dubai Wire.

Background

PRC

Based on our examination of the targeted dumping allegations filed by the petitioners¹ on December 10, 2007, December 14, 2007, and January 10, 2008, and after consideration of the rebuttal comments submitted by Paslode and Xingya Group, we determined that the allegations indicated that there is a pattern of export prices for comparable merchandise that differs significantly among regions or purchasers. See CFS Paper from Korea.² Therefore, for purposes of the preliminary determination, we accepted the petitioners' allegation that Paslode targeted certain regions and Xingya Group targeted certain customers during the period of investigation (POI). See Memorandum to the File entitled "Antidumping Duty Investigation of Certain Steel Nails from the People's Republic of China - Preliminary Analysis on Targeting" (PRC Prelim Target Memo), dated January 15, 2008.

After making certain adjustments to the petitioners' targeted dumping methodology as applied to Paslode and Xingya Group, on January 15, 2008, we preliminarily determined that the petitioners' allegations provided a reasonable basis to find that there is a pattern of export prices for comparable merchandise that differ significantly among regions/purchasers, and that these differences cannot be taken into account using the average-to-average methodology, pursuant to section 777A(d)(1)(B) of the Act. See PRC Prelim Target Memo. As a result, we applied the average-to-transaction methodology to the targeted export prices and found a margin of 4.70 percent for Paslode³ and 44.57 for Xingya Group. Our preliminary determination was consistent with the targeted dumping standards and methodologies accepted by the Department in CFS Paper from Korea.

UAE

On October 26, 2007, the petitioners submitted a targeted dumping allegation in the UAE investigation for Dubai Wire. The allegation was based on targeting by Dubai Wire to a specific U.S. customer (*i.e.*, its largest U.S. customer). The allegation covered sales to this U.S. customer during the POI, and compared the monthly average prices of products sold to this customer with the monthly average prices of the same products sold to all other U.S. customers during the POI.

¹The petitioners in both the PRC and UAE investigations are Mid Continent Nail Corporation, Davis Wire Corporation, Gerdau Ameristeel Corporation (Atlas Steel & Wire Division), Maze Nails (Division of W.H. Maze Company), and Treasure Coast Fasteners.

²See Notice of Final Determination of Sales at Less Than Fair Value: Coated Free Sheet Paper from the Republic of Korea, 72 FR 60630 (October 25, 2007), and accompanying Issues and Decision Memorandum at General Comment 3 (CFS Paper from Korea).

³On February 7, 2008, we published an amended preliminary determination to correct certain dumping margin calculations for Paslode; however, the targeted dumping analyses remained unchanged. See Notice of Amended Preliminary Determination of Sales at Less Than Fair Value: Certain Steel Nails from the People's Republic of China, 73 FR 7254 (February 7, 2008).

The petitioners identified identical products based on the control numbers (CONNUMs) reported by Dubai Wire in its U.S. sales database. Using this methodology, the petitioners alleged targeted dumping where the weighted-average net price to the alleged targeted purchaser was more than two percent lower than the weighted-average net price to the non-targeted purchasers for product and month combinations representing a preponderance (more than 50 percent) of the targeted quantity.

Although we noted certain concerns with respect to the petitioners' targeted dumping methodology as applied to Dubai Wire,⁴ on January 15, 2008, we preliminarily determined that it provided a reasonable basis to find that there is a pattern of export prices for comparable merchandise that differ significantly among purchasers, and that these differences cannot be taken into account using the average-to-average methodology, pursuant to section 777A(d)(1)(B) of the Act. See Memorandum to the File entitled "Antidumping Duty Investigation of Certain Steel Nails from the United Arab Emirates - Preliminary Analysis on Targeting," dated January 15, 2008. Therefore, we applied the average-to-transaction methodology to the targeted export prices and found a margin of 4.47 percent for Dubai Wire/Global Fasteners. Our preliminary determination was consistent with the targeted dumping standards and methodologies accepted by the Department in CFS Paper from Korea.

Post-Preliminary Analysis in the PRC and UAE Investigations

We noted in our preliminary determinations for both investigations that the Department was in the process of reassessing the framework and standards for the targeted dumping analyses, and that we intended to develop a new framework in the context of this proceeding and to apply it in time for parties to have an opportunity to comment before the final determinations. In formulating this new methodology, the Department requested comments from interested parties, regarding certain principles: 1) whether it is appropriate to collapse into one test the assessment of patterns of low prices and of significant price differentials; 2) if so, whether the test for a pattern of low prices ought to be established on the basis of a simple comparison of the average price to the alleged target with an average non-targeted price; and 3) whether any test for a significant price difference ought to simply be based on an absolute, bright-line threshold or whether it should account for other aspects of the non-targeted group's data. In response to the Department's request, the petitioners and the respondents in the PRC and UAE investigations filed such comments on February 15, 2008, and rebuttals to these comments on March 10, 2008.

⁴These concerns included the high proportion of the respondent's total sales made to the alleged targeted customer, the pooling of all alleged non-targeted customers into one price average group, the treatment of the volume rebates granted to the targeted customer in the derivation of the net price used in the petitioners' price comparisons, and the two-percent price targeting threshold employed by the petitioners.

Petitioners' Comments:

The petitioners contend that the Department should formally adopt and continue to apply the standard employed by the petitioners in their targeted dumping allegations in these investigations, which was also employed in CFS Paper from Korea, as described above. This standard, they assert, is consistent with methodologies applied in other contexts of the antidumping law (e.g., determination of de minimis margin in investigations, application of arm's-length test, and analysis of level of trade), and is reasonable in the context of the market for certain steel nails wherein a two-percent price difference is significant. Further, the petitioners maintain that their two-percent test ("P/2 test") approach to assessing patterns of low prices and of significant price differentials is reasonable and methodologically sound, and that the assessment of the existence of a pattern of low prices by comparing the overall average prices to average prices in regions, to customers, or in time periods is also sound. The petitioners explain that the P/2 test quantifies both the existence and the amount of price differences.

Furthermore, the petitioners contend that the Department should not adopt a standard that requires a showing of intent, or an explanation for why a particular customer or region was targeted, because the statute does not require it. Emphasizing that the statute was designed to prevent the concealment of dumping margins whenever there are significant price differences among U.S. sales, the petitioners note that, when patterns of significant price differences exist, those margins are concealed regardless of why the patterns exist. Therefore, the petitioners reason, in order to effectuate the purpose of the targeted dumping provision, the Department must limit its examination to whether such patterns exist, and not require any further showings by the petitioner. A more detailed defense of the petitioners' methodology and its application is included in the petitioners' February 15, 2008, submission filed in both investigations.

With respect to the claim of the PRC respondent Paslode that overall dumping should be determined before considering targeted dumping allegations (discussed below), the petitioners contend that is a flawed approach because the Department must first determine the dumping calculation approach (including a targeted dumping methodology) before it can determine whether dumping is taking place. The petitioners maintain that their P/2 test approach for analyzing the existence and degree of significant price differences is consistent with the statute and regulations. The petitioners further assert that two percent price differences are significant in the nail industry, as differences of less than two percent have been cited as examples of lost sales and revenue elsewhere in this proceeding. Moreover, the petitioners maintain that the P/2 test using net prices on a monthly, product-specific basis represents a statistically sound approach to quantifying whether the significant price differences constitute a pattern. In contrast, the petitioners consider Paslode's alternative approach to be unworkable and statutorily inconsistent. The petitioners discuss their objections to Paslode's comments in more detail in their March 10, 2008, rebuttal to Paslode's submission filed in the PRC investigation.

With respect to the complaints of the PRC respondent Xingya Group regarding the targeted dumping allegation against it, the petitioners assert that Xingya Group has confused the

examination of potential targeting with the execution of the test examining targeting. Further, contrary to Xingya Group's claim, the petitioners point out that the statute contains no requirement that a party alleging targeted dumping, or the Department when making such a determination, make any showing as to why the targeted dumping has occurred. Finally, the petitioners again defend the application of the two-percent price difference threshold in this proceeding against Xingya Group's arguments to the contrary (as discussed below). These rebuttal comments are discussed in detail in the petitioners' March 10, 2008, rebuttal to Xingya Group's submission filed in the PRC investigation.

With respect to the UAE respondent Dubai Wire's regression analysis submitted on January 15, 2008, and cited in Dubai Wire's February 15, 2008, submission, the petitioners contend that it is statistically unsound in several respects and should not be used to measure targeted dumping. The petitioners counter with their own economic report in which they allege a number of flaws with Dubai Wire's methodology and analysis, and assert that, contrary to Dubai Wire's claims, the petitioners' P/2 test satisfies all statutory requirements and provides a sound and useable methodology to identify targeted dumping. These rebuttal comments, along with the petitioners' economic report, are discussed in more detail in the petitioners' March 10, 2008, rebuttal comments submitted in the UAE investigation.

In sum, the petitioners urge the Department to continue to employ the P/2 test to identify targeted dumping in the final determinations of these investigations, and to formally adopt it for use in other proceedings.

Respondents' Comments:

Paslode contends that the Department must first determine whether or not dumping is occurring and only after making this finding should the Department consider allegations of targeted dumping. With respect to targeted dumping, Paslode states that it is not appropriate to collapse into one test the assessment of patterns of low prices and significant price differentials. Instead, Paslode argues for a two-step analysis to: 1) establish a price differential considered significant enough to differentiate prices meaningfully; and 2) assess the presence or absence of a distinct distribution pattern, consistent with the alleged targeting. To that end, Paslode proposes a procedure for considering targeted dumping allegations that involves assessing the basic reasonableness of the allegation and a pricing analysis based on statistical considerations of frequency and quantity of prices between the alleged targeted and non-targeted sets of sales. Further details of this proposal are included in Paslode's February 15, 2008, submission in the PRC investigation.

Paslode adds in its rebuttal to the petitioners' comments that the petitioners' P/2 test for price difference significance should be rejected because it ignores the variation in the prices being considered, as well as the absolute values involved. Paslode prefers an approach that relies on the statistical standard deviation among prices for the price significance benchmark. Paslode also challenges the presumption in the petitioners' methodology that the existence of price differences among a subset of sales is a sufficient basis for a targeted dumping allegation,

without considering other factors. Further, Paslode takes issue with the petitioners' reliance on comparing average prices for identifying price differences, as the 'average' under the petitioners' methodology is comprised of prices in a biased selection of sales that are both higher and lower than the mean, guaranteeing that targeted dumping will be found because of these price differences. Instead, Paslode reiterates its position that the Department should consider the frequency and quantity of sales outside the normal range to establish whether a pattern of pricing indicates targeting. These rebuttal arguments are discussed in more detail in Paslode's March 10, 2008, submission in the PRC investigation.

Xingya Group takes issue with the petitioners' allegation of targeted dumping as it was based on a comparison of sales prices to each customer for all products, rather than defining specific product groups, such as the Department's product-specific CONNUMs. Further, Xingya Group argues that a targeted dumping claim must be made on the basis of more than observations of a pricing pattern, which Xingya Group claims that the petitioners did in its case, but rather on the basis of a pricing pattern based on purchases, regions, or periods of time. Xingya Group also contends that the petitioners have failed to demonstrate that a two-percent price difference used in their targeted dumping analysis is "significant" within the nail industry. In the absence of any objective evidence to establish a price difference level, Xingya Group proposes that a 25-percent difference standard be applied, consistent with the Department's threshold for determining "significant" ministerial errors in antidumping duty investigation preliminary determinations. See 19 CFR 351.224(g). Xingya Group's arguments are outlined in more detail in its February 15, 2008, submission in the PRC investigation.

In its rebuttal to the petitioners' arguments, Xingya Group reiterates its contention that the petitioners' targeted dumping allegation with respect to Xingya Group is inadequate, citing the Department's recent rejection of the petitioners' targeted dumping allegation in Preliminary Determination of Sales at Less Than Fair Value, Postponement of Final Determination, and Affirmative Preliminary Determination of Critical Circumstances, in Part: Light-Walled Rectangular Pipe and Tube from the People's Republic of China, 73 FR 5500, 5502 (January 30, 2008). In particular, Xingya Group cited to the statement in that determination that the petitioner failed to address or take into account other possible reasons for the observed price differences, and thus the Department found that the petitioners did not adequately establish price patterns attributable to targeted dumping. Accordingly, Xingya Group argues that the petitioners in the instant case have similarly failed to address these concerns and thus their allegation must be rejected. Xingya Group's rebuttal is outlined in more detail in its March 10, 2008, submission in the PRC investigation.

Dubai Wire argues that the Department should entirely discard the petitioners' methodology as it develops a new framework. Instead, the respondent maintains, the Department should, in accordance with 19 CFR 351.414(f), use generally accepted statistical methods (i.e., multiple regression analysis) to decide if there is targeted dumping, methods which were employed by Dubai Wire in its own analysis included in its January 15, 2008, submission in the UAE investigation. According to Dubai Wire, this analysis demonstrates that it did not engage in targeted dumping during the POI. Dubai Wire asserts that using such a standard and accepted

empirical technique for assessing targeted dumping in this case and in future cases will fulfill the goal behind the targeted dumping regulation's emphasis on statistical techniques so that the targeted dumping test will be "applied on a consistent basis and in a manner that ensures transparency and predictability to all parties concerned." See Antidumping Duties; Countervailing Duties: Final Rule, 62 FR 27296, 27374 (May 19, 1997).

In reference to the petitioners' specific targeted dumping allegation against Dubai Wire, Dubai Wire asserts that it is implausible that it could be dumping to its largest U.S. customer, accounting for the overwhelming majority of its total sales of subject merchandise during the POI, but making up for this dumping through prices that are only allegedly two percent higher on the remaining (small) portion of its U.S. sales to other customers. Dubai Wire contends that this scenario is especially implausible in the nail market, which, the petitioners have claimed in their petition and before the U.S. International Trade Commission, is highly competitive, price sensitive and fungible, such that one could not consistently sell at a higher price to select customers. Moreover, Dubai Wire asserts that because sales to the alleged non-targeted customers represent only a fraction of Dubai Wire's total U.S. sales, there seems to be no reason why the average-to-average methodology does not suffice to measure any alleged dumping. Dubai Wire's position is discussed in more detail in its February 15, 2008, submission in the UAE investigation.

With respect to the petitioners' reliance on the P/2 test, Dubai Wire argues that the petitioners did little to address the Department's concerns with it. Moreover, unlike Dubai Wire's regression analysis, which it claims is a standard and appropriate statistical technique for determining factors that affect prices, Dubai Wire asserts that the petitioners failed to demonstrate how their P/2 test uses standard and appropriate statistical techniques, as required by 19 CFR 351.414(f)(2). Dubai Wire maintains it would be unreasonable to define a two-percent price differential as significant and proposes that the significance threshold be higher. Finally, the respondent takes issue with the petitioners' argument that the Department should not craft a targeted dumping methodology that considers other factors when evaluating whether observed price differences are significant, contending that both a quantitative and qualitative analysis should be performed in determining targeted dumping, consistent with past case precedent. These arguments, including Dubai Wire's objections to the petitioners' P/2 test methodology, are discussed in Dubai Wire's March 10, 2008, submission filed in the UAE investigation.

New Targeted Dumping Test

The statute allows the Department to employ the average-to-transaction methodology in its margin calculations if: 1) there is a pattern of export prices that differ significantly among purchasers, regions, or periods of time; and 2) the Department explains why such differences cannot be taken into account using the average-to-average or transaction-to-transaction methodology. See section 777A(d)(1)(B) of the Act. We have considered the parties' comments, as well as the Department's requirement under 19 CFR 351.414(f)(1)(i) to analyze targeted dumping using standard and appropriate statistical techniques, and have developed a

new test to determine whether targeted dumping has occurred, as described below.

Specifically, we devised a two-stage test, the first to address the pattern requirement and the second to address the significant difference requirement. The first stage, the “standard deviation test,” requires the Department to determine the share of the alleged target’s (whether purchaser, region, or time period) purchases of identical merchandise, by sales value, that are at prices more than one standard deviation below the average price of that identical merchandise to all customers. The standard deviation and the average price are calculated using a POI-wide average price weighted by sales value to the alleged target, and POI-wide average price weighted by sales value to each distinct non-targeted entity of identical merchandise. If the total sales value that meets the standard deviation test exceeds 33 percent of the sales value to the alleged target of the identical merchandise, then the pattern requirement is met.

In the second stage, the Department examines all the sales of identical merchandise that pass the standard deviation test and determines the sales value for which the difference between the average price to the alleged target and the lowest non-targeted average price exceeds the average price gap (weighted by sales value) observed in the non-targeted group. If the share of these sales exceeds five percent of the sales value to the alleged target of the identical merchandise, then the significant difference requirement is met and the Department determines that targeted dumping has occurred.

Results of the Application of the New Targeted Dumping Test

For purposes of these post-preliminary determinations on targeted dumping, we have applied the above-described test to the U.S. sales data reported by each of the respondents. Our observations and results are discussed in more detail in a separate memorandum placed on the record of each investigation.

As outlined in the separate memoranda, we found that, for the PRC respondent, Xingya Group, there is a pattern of export prices for comparable merchandise that differs significantly among purchasers, and that these differences cannot be taken into account using the average-to-average methodology, because that methodology, by averaging the high prices with the low prices, has the effect of masking the extent of sales at less than fair value. Therefore, pursuant to section 777A(d)(1)(B) of the Act, we applied the average-to-transaction methodology to the targeted export prices for Xingya Group and found a margin of 48.63 percent for Xingya Group. For the PRC respondent, Paslode, we did not find a pattern of export prices for comparable merchandise that differs significantly among regions. Therefore, we applied the average-to-average methodology to all sales and found a de minimis margin (0.11 percent) for Paslode.

With respect to the UAE respondent Dubai Wire, we did not find a pattern of export prices for comparable merchandise that differs significantly among purchasers. Therefore, we applied the average-to-average methodology to all sales and found a de minimis margin (0.09 percent) for Dubai Wire.

Comments by Interested Parties

Although the Department has not yet established explicit criteria or standards for defining “region” in the targeted dumping context, we have accepted the petitioners’ use of U.S. Census-based regions for purposes of our targeted dumping analysis for the post-preliminary determination in the PRC case. The Department now invites comments on standards and criteria for definitions of “region” that are reflective of the industry and commercial market in the United States.

Parties may also comment on the Department’s overall post-preliminary determination application of the new targeted dumping test in these proceedings. Consistent with 19 CFR 351.309(c)(2), all comments should be filed in the context of the case and rebuttal briefs. The briefing schedule for each investigation is as follows:

PRC: Case briefs due by May 1, 2008; Rebuttal briefs due by May 8, 2008

UAE: Case briefs due by April 30, 2008; Rebuttal briefs due by May 6, 2008

David M. Spooner
Assistant Secretary
for Import Administration

Date